

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 9898 of 2002**

With

CIVIL APPLICATION NO.3116 OF 2003

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of  
the judgment ?

Whether this case involves a substantial question of  
4 law as to the interpretation of the constitution of  
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT STATE ROAD TRANSPORT CORPORATION -****Petitioner(s)****Versus****RAJPURA ISMAILBHAI VALIBHAI - Respondent(s)**

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**Appearance :**

MR ASHISH M DAGLI for Petitioner(s) : 1,

MR MUKESH H RATHOD for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI****Date : 27/12/2005**

**ORAL JUDGMENT**

1. This petition is directed against the award dated 30<sup>th</sup> March 2002 passed by the Labour Court, Himmatnagar, in Reference (LCH) No.149 of 1996, whereby the petitioner was directed to reinstate the respondent with 50% back wages.

2. The respondent was working as workcharge clerk with the petitioner corporation. The respondent was relieved from service on 31.7.1983. He, therefore, raised a dispute which was referred to the Labour Court. The Labour Court, after hearing the parties, passed the aforesaid award.

3. Learned counsel for the petitioner submitted that the respondent had voluntarily abandoned the work and therefore he should not have been reinstated. He further submitted that the respondent was taken for a particular project and therefore, the Labour Court committed an error in passing the impugned award.

4. Mr. Rathod for the respondent supported the award and submitted that the Labour Court has considered all the facts and circumstances of the case and therefore no interference may be caused in this petition.

He also submitted that the Labour Court has awarded only 50% back wages.

5. As a result of hearing and perusal of the record, I am of the opinion that the Labour Court has given cogent and convincing reasons for reinstating the respondent in service. I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for grant of reinstatement.

6. However, I am of the view that the back wages were granted without application of mind . The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, the petition is partly allowed. The award qua back wages is quashed and set aside. The rest of the award is confirmed. The award as modified by this Court shall be implemented within a period of eight weeks from the date of receipt of writ of this Court. It is clarified that since provisions of section 17-B were complied with, no further payment is required to be made. Rule is made absolute to the aforesaid extent with no order as to costs.

8. Since the main petition is disposed of Civil Application No.3116 of 2003 will not survive and is accordingly disposed of.

[K. S. JHAVERI, J.]

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